

N9e2ZeiC kjc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

23 Cr. 419 (LAK)

5 RICHARD ZEITLIN,

6 Defendant.

7 -----x

Conference

8 September 14, 2023
9 2:40 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

18 BY: JANE KIM

19 KEDAR S. BHATIA

20 STEPHANIE SIMON

21 Assistant United States Attorneys

22 THE BERNHOFT LAW FIRM, S.C.

23 Attorneys for Defendant

24 BY: ROBERT G. BERNHOFT

25 LAW OFFICES OF JOSHUA L. DRATEL, P.C.

JOSHUA L. DRATEL

Attorney for Defendant

Also Present: Special Agent Jacob Belog, F.B.I.

N9e2ZeiC kjc

1 (Case called)

2 THE DEPUTY CLERK: Government, are you ready? Please
3 put your appearances on the record.

4 MS. KIM: Yes, your Honor. Jane Kim, Kedar Bhatia,
5 Stephanie Simon for the government. And with us at counsel
6 table is Jacob Balog, special agent of the F.B.I.

7 THE COURT: Thank you.

8 THE DEPUTY CLERK: Defendant, are you ready?

9 MR. BERNHOFT: Yes, sir. Attorney Robert Gerald
10 Bernhoft appearing *pro hac vice* for Defendant Zeitlin.
11 Mr. Zeitlin appears to my immediate right. He is in custody.
12 To my far right is our local attorney Joshua L. Dratel.

13 THE COURT: Thank you. Mr. Dratel is well known.

14 MR. DRATEL: Good afternoon, your Honor.

15 THE DEPUTY CLERK: Should I arraign the defendant?

16 THE COURT: Arraign the defendant, please.

17 THE DEPUTY CLERK: Mr. Bernhoft, have you received a
18 copy of the indictment?

19 MR. BERNHOFT: Yes, sir.

20 THE DEPUTY CLERK: Have you reviewed it with your
21 client?

22 MR. BERNHOFT: I have.

23 THE DEPUTY CLERK: Do you waive the public reading?

24 MR. BERNHOFT: Yes, I do.

25 THE DEPUTY CLERK: How does he plead?

N9e2ZeiC kjc

1 MR. BERNHOFT: I'm sorry?

2 THE DEPUTY CLERK: How does he plead?

3 THE DEFENDANT: Not guilty.

4 THE DEPUTY CLERK: Thank you. Please be seated,
5 gentlemen.

6 THE COURT: Thank you.

7 I direct the prosecution to comply with its
8 obligation. under *Brady v. Maryland* and its progeny, to
9 disclose to the defense all information, whether admissible or
10 not, that is favorable to the defendant, material either to
11 guilt or to punishment, and known to the prosecution.

12 Possible consequences for noncompliance may include
13 dismissal of individual charges or the entire case, exclusion
14 of evidence, and professional discipline or court sanctions on
15 the attorneys responsible.

16 I will be entering a written order more fully
17 describing this obligation and the possible consequences of
18 failing to meet it, and I direct the prosecution to review and
19 comply with that order.

20 Does the prosecution confirm that it understands its
21 obligations and will comply with them?

22 MS. KIM: Yes, your Honor, we confirm.

23 THE COURT: Thank you.

24 Okay. Since this is the first appearance, Ms. Kim,
25 please give me a thumbnail description.

N9e2ZeiC kjc

1 MS. KIM: Certainly, your Honor.

2 The defendant was arrested in Las Vegas on August 17,
3 2023. He was presented there before a magistrate judge and
4 detained. There were two days of bail proceedings on August 17
5 and August 18. The defendant was then transported to the
6 Southern District of New York. And so, for purposes of the
7 Speedy Trial Act, there are still 70 days remaining on the
8 clock.

9 The defendant is charged in an indictment with four
10 counts—conspiracy to commit telemarketing wire fraud,
11 telemarketing wire fraud, conspiracy to obstruct justice, and
12 obstruction of justice.

13 These charges are in relation to the defendant's
14 operation of a multimillion-dollar telemarketing call center
15 that made false and misleading statements to donors and
16 potential donors while raising money on behalf of political
17 action committees, or PACs.

18 The defendant also, upon learning of the government's
19 investigation, instructed his employees to delete evidence of
20 his fraud.

21 THE COURT: Thank you. Did you want to go on?

22 MS. KIM: No, your Honor. I am happy to talk about
23 discovery but will pause here.

24 THE COURT: That's what I was going to ask about next.

25 MS. KIM: The parties have handed up a proposed

N9e2ZeiC kjc

1 protective order that has been signed by the government and
2 defense counsel.

3 We understand that a hard drive is en route from the
4 defense, and the government has been working to prepare a
5 substantial initial production of discovery and will continue
6 to make rolling productions.

7 With the exception of electronic devices that were
8 seized on August 17 from the defendant's home and business, the
9 government plans to produce the large bulk of discovery within
10 the next six weeks, if not sooner.

11 THE COURT: Let's get a little more specific. Put
12 aside the electronic devices for a minute. When do you expect
13 to complete discovery?

14 MS. KIM: We expect to complete discovery within the
15 next six weeks, if not sooner, your Honor. That discovery
16 consists of stored Communications Act search warrants and
17 returns. The returns include e-mails, documents, fundraising
18 call recordings, agreements between PAC owners and the
19 defendant, Skype messages, and other data.

20 The discovery also includes various subpoena returns
21 from providers, individuals, entities and financial
22 institutions; FEC records and reports; FTC materials; 2703(d)
23 and pen materials; a variety of publicly available information,
24 including certain FEC materials, PAC websites and business
25 records; the defendant's statements, including from e-mails,

N9e2ZeiC kjc

1 recorded calls, a signed affidavit to a federal judge and sworn
2 testimony in a civil deposition.

3 The discovery also includes warrants to search the
4 defendant's home and one of his business locations. Both
5 properties were located in Las Vegas, Nevada. And the
6 materials seized from those searches include more than two
7 dozen electronic devices that have been transported from
8 Las Vegas to New York, and the government is planning to swear
9 out a search warrant to search those devices, and then we will
10 work to extract and review those devices and provide them to
11 the defendant --

12 THE COURT: When do you anticipate that you will do
13 that?

14 MS. KIM: The practice in Las Vegas, what we learned
15 was that typically for out-of-district cases the magistrate
16 judge there will approve a search warrant to seize electronic
17 devices but asks that a supplemental warrant --

18 THE COURT: I was assuming that. So I'm assuming you
19 will get the warrant.

20 MS. KIM: Yes.

21 THE COURT: And assuming you get the warrant, when
22 will you be done?

23 MS. KIM: We -- because there are approximately two
24 dozen devices, what we plan to do is triage those devices and
25 prioritize the ones that, you know, were found in the

N9e2ZeiC kjc

1 defendant's bedroom or ones that appear to be newer devices.

2 We will start the extractions as soon as we get the search
3 warrant. We will then produce the copies of those extractions
4 to the defendant.

5 In terms of timing, it is hard to say, because we
6 don't know at this stage the volume of the electronic devices
7 and how long the extractions will take.

8 THE COURT: What's your best estimate?

9 MS. KIM: Could I have one minute, your Honor.

10 THE COURT: Yes.

11 (Government counsel confer)

12 MS. KIM: Your Honor, this is our very best estimate,
13 not knowing the size of the devices, but we believe that we may
14 be able to extract all of the devices within approximately two
15 months and then the contents of those devices would have to
16 undergo a privilege review. If there are devices that solely
17 belong to the defendant, we would produce those extractions
18 promptly to the defendant and then proceed with our review of
19 the devices.

20 THE COURT: Okay. Mr. Bernhoft, what have you got to
21 enlighten me with about the progress of the case?

22 MR. BERNHOFT: We have got a discovery order that
23 Mr. Dratel and I have agreed to, so that will facilitate
24 provisioning of Rule 16 --

25 THE COURT: I'm sorry. You've got a discovery motion?

N9e2ZeiC kjc

1 MR. BERNHOFT: A discovery protective order.

2 THE COURT: Yes.

3 MR. BERNHOFT: That was handed up.

4 THE COURT: That's what counsel just said.

5 MR. BERNHOFT: Ms. Kim has asked us for a two-terabyte
6 hard drive. We are supplying that. We are shipping it to her
7 designee. It will be shipped out this week, and they will be
8 in receipt of that.

9 We produced approximately 300,000 pages of documents
10 in -- Mr. Zeitlin and his companies did during the grand jury
11 investigation, about 13, 14 months. We understand there are
12 multiple grand jury subpoenas issued. We have spoken to joint
13 defense counsel, and they also produced hundreds of thousands
14 of pages. So I don't think it's hyperbolic --

15 THE COURT: You spoke to whom?

16 MR. BERNHOFT: Joint defense counsel that were
17 representing some of the witnesses. There was a joint defense
18 agreement, your Honor. And so, I mean, the paper document page
19 discovery could approach a million pages, plus the devices that
20 Ms. Kim is referencing, and I can't make an informed estimate
21 about that.

22 THE COURT: Well, who were the parties to this joint
23 defense agreement?

24 MR. BERNHOFT: Yes, they are principally current and
25 former employees of Mr. Zeitlin and his companies.

N9e2ZeiC kjc

1 THE COURT: And was there a single defense counsel or
2 more?

3 MR. BERNHOFT: No, there was a pool counsel named
4 Attorney Robert Peabody, from Husch Blackwell in Boston,
5 Massachusetts, and he represented most of the current and
6 former employees. And then Sebaly Shilito & Dyer, a law firm
7 in Dayton, Ohio, lead counsel there was Attorney Brian Penick,
8 and Brian Penick represented two PAC—political action
9 committee—treasurers.

10 THE COURT: And was your client a party to that
11 defense --

12 MR. BERNHOFT: Yes, sir.

13 THE COURT: -- agreement?

14 MR. BERNHOFT: Yes.

15 THE COURT: And who represented him?

16 MR. BERNHOFT: I did.

17 THE COURT: Okay. What else should I know from the
18 defense side?

19 MR. BERNHOFT: Well, there has been a lot of paper
20 filed, a lot of ink spilled respecting Mr. Zeitlin's detention
21 order from Nevada. Do you wish to address that, your Honor.

22 THE COURT: No. I'm not ready for that. I want to
23 find out the shape of the case.

24 MR. BERNHOFT: Yes.

25 Well, the electronic devices I can't give an

N9e2ZeiC kjc

1 intelligent surmise about. The government's got a couple of
2 dozen of them, and we will wait for word for them on that. We
3 do expect about a million document pages in discovery. They
4 requested a two-terabyte drive.

5 Once we receive those materials, the defense will need
6 time to review, investigate, integrate those materials into our
7 theory of defense, so that's -- we expect that, what I am
8 hearing from the government—some of this I am hearing for the
9 first time today—that it is going to be a bit before we can
10 set this case for trial so that the defense can be fully
11 prepared, your Honor.

12 THE COURT: Is there any reason why pretrial motions
13 can't precede the production of the contents of the electronic
14 devices to the extent there is any?

15 MR. BERNHOFT: Yes, your Honor. I would respectfully
16 suggest that pretrial motions, at least most of the ones I
17 would contemplate, cannot proceed because they would be
18 predicated on a review of the discovery.

19 THE COURT: How so?

20 MR. BERNHOFT: Well, kind of, for example, it depends
21 on what kind of discovery we see regarding the elements of the
22 fraud charge and the obstruction charge. We think the
23 indictment -- we contemplate a pre-answer -- a motion to
24 dismiss based on failure to state cognizable offenses, not
25 an --

N9e2ZeiC kjc

1 THE COURT: Let's focus on that.

2 MR. BERNHOFT: Yes.

3 THE COURT: How would the discovery have any bearing
4 on that motion?

5 MR. BERNHOFT: That would be the one motion that the
6 discovery would not have a material bearing, your Honor.

7 THE COURT: Okay. What else?

8 MR. BERNHOFT: Well, we have to evaluate the discovery
9 and see what the government does with its Rule 16 obligations.
10 We have *Brady*, *Giglio* issues. We have discussed Jencks with
11 them. But ultimately we have to assure ourselves that the
12 government has made fulsome disclosures under their
13 obligations. If they haven't, we would bring on discovery
14 motions.

15 THE COURT: Any reason why I couldn't set a motion
16 deadline now for everything that you can think of that is not
17 dependent on the content of the electronic devices?

18 MR. BERNHOFT: We also have the document pages --

19 THE COURT: The what?

20 MR. BERNHOFT: -- but we could set a motion
21 deadline --

22 THE COURT: I'm sorry. The what? You said, "We also
23 have the 'bumble bumble.'"

24 MR. BERNHOFT: We also have --

25 THE COURT: I didn't get the "bumble bumble" part.

N9e2ZeiC kjc

1 MR. BERNHOFT: I'm sorry, Judge.

2 We also have the substantial amount of documents that
3 are produced in addition to the devices.

4 THE COURT: Well, yes, I know you do. That's the
5 predicate of the question.

6 MR. BERNHOFT: Yes. I think the Court could and
7 should set a motions deadline for a challenge to the
8 sufficiency of the indictment itself. Discovery motions would
9 have to be held in abeyance pending our receipt and review.

10 THE COURT: Why?

11 MR. BERNHOFT: Because we have to review the discovery
12 to make sure that we have everything that we believe we are
13 entitled to under the statutes.

14 THE COURT: And how are you going to do that?

15 MR. BERNHOFT: By reviewing it.

16 THE COURT: How is reviewing what you've got going to
17 tell you what you don't have and that the government has it?

18 MR. BERNHOFT: Well, we have a very good idea what
19 the universe of discovery and what -- who the witnesses are,
20 your Honor, and we will play match-up and cross-map those
21 things and make sure the government has discharged its
22 obligations, sir.

23 THE COURT: Ms. Kim, why isn't what I suggested
24 totally practical?

25 MS. KIM: Your Honor, the government doesn't object to

N9e2ZeiC kjc

1 setting a motion schedule now for all motions that don't
2 require review of the discovery.

3 THE COURT: So that would include, among other things,
4 perhaps, any motions to suppress any custodial statements there
5 might be, motions claiming there was a lack of probable cause
6 for search warrants, and I imagine quite a few other things.
7 Yeah?

8 MS. KIM: Yes, your Honor.

9 THE COURT: All right. So I will set a discovery
10 cutoff applicable to everything except the contents of the
11 electronic devices of October 31.

12 Is there any reason why you would need any longer
13 than the end of November to make whatever motions you can think
14 of other than motions that depend upon the contents of the
15 electronic devices that are produced?

16 MR. BERNHOFT: None that come to my mind right now,
17 your Honor.

18 THE COURT: Okay, November 30 for all motions except
19 those dependent.

20 Does the government think it needs more than two weeks
21 to respond to any such motions?

22 MS. KIM: No, your Honor.

23 THE COURT: Okay, December 14.

24 I'm assuming these are weekdays, Andy. You will
25 correct me.

N9e2ZeiC kjc

1 THE DEPUTY CLERK: The 14th is a Thursday, Judge.

2 THE COURT: Government opposition by December 14.

3 Reply, if any, by December 21.

4 Let's get a date for early January for argument or
5 conference on those motions, and we will review where we are,
6 if we have not completed discovery of the production of the
7 electronic device material previously, and the government will
8 inform me when that happens. Andy?

9 THE DEPUTY CLERK: Judge, how about Thursday, December

10 4 --

11 THE COURT: No, not December.

12 THE DEPUTY CLERK: Sorry, I mean January 4.

13 (Court and deputy clerk confer)

14 THE COURT: January 4 at 3:00 for argument or
15 conference.

16 Has any time gone by on the Speedy Trial clock?

17 MS. KIM: No, your Honor.

18 THE COURT: All right. Anything else relating to the
19 scheduling, basic scheduling of the case?

20 MS. KIM: Not from the government, your Honor.

21 MR. BERNHOFT: Not from the defense, your Honor.

22 THE COURT: How long does the government estimate this
23 will take to try?

24 MS. KIM: Approximately three weeks, your Honor.

25 THE COURT: Defense, what do you think?

N9e2ZeiC kjc

1 MR. BERNHOFT: I think that's a fair estimate right
2 now, your Honor.

3 THE COURT: Soup to nuts, jury selection to verdict.

4 MR. BERNHOFT: Maximum four weeks, but I think three
5 weeks is a fair surmise.

6 THE COURT: Okay.

7 I'm going to set it for trial April 2. Obviously if
8 there are unanticipated problems with the electronic devices,
9 that can move, but I want to be sure we are on everybody's
10 dance card now.

11 I have signed the protective order.

12 Now, we have a motion to vacate the detention order,
13 which I will hear in a minute.

14 I have read the papers. Mr. Bernhoft, I realize you
15 are from out of town. I expect considerably lower temperature
16 and higher level of mutual respect between counsel in any
17 submissions to this Court --

18 MR. BERNHOFT: Yes, your Honor.

19 THE COURT: -- than your letter reflects, but I will
20 hear you.

21 MR. BERNHOFT: Yes, your Honor.

22 Respecting tone and tenor --

23 THE COURT: If you would please go to the lectern.

24 MR. BERNHOFT: Respecting tone and tenor of the
25 filings, we felt that we matched the tone and tenor of the

N9e2ZeiC kjc

1 government's opposition. We felt it was highly aggressive, and
2 typically we don't.

3 THE COURT: For what it's worth, the judge doesn't
4 agree with that.

5 MR. BERNHOFT: All right. Thank you, your Honor.

6 I would turn to the -- first, your Honor, if I may, to
7 the addendum that was submitted by SDNY Pretrial Services,
8 which recommends release conditions somewhat similar to the
9 proposal that we made, if I might.

10 In terms of the factors favoring Mr. Zeitlin's release
11 on conditions that would reasonably assure his appearance at
12 future hearings and court dates, I would note very long
13 substantial ties to Wisconsin and Nevada. He's been a Nevada
14 resident for almost 30 years.

15 He's been gainfully employed his entire life, since he
16 was a teenager. He has developed a series of very successful
17 telemarketing fundraising companies over the years. He has
18 employed thousands of people over those decades and provided
19 gainful employment and spun off other companies that service
20 the fundraising industry. He did fundraising for many
21 excellent charities for decades and then turned towards
22 political action committee fundraising since about 2017 or so.

23 The indictment alleges, and this is based on the
24 indictment itself, conversations we have had with the
25 government, the core theory of criminality appears to be that

N9e2ZeiC kjc

1 at times Mr. Zeitlin and at least one other person who is
2 unidentified would place a script, a sales script, into the
3 technology system that is required to deliver the sales
4 pitches, and that when sales were down, they would utilize this
5 special script, and that that script made material
6 misrepresentations.

7 There is not an allegation in the indictment, and the
8 government does not allege, that somehow Mr. Zeitlin's
9 operations are fraudulent *per se*. It is clear that they
10 aren't. He has fundraised for some excellent charities and
11 PACs throughout the many decades. So these are unique charges
12 that target the alleged practice of inserting deceptive scripts
13 so that false and fraudulent statements were made to potential
14 donors when sales were down.

15 I have pretty good knowledge. I have known
16 Mr. Zeitlin for about 35 years personally. I started
17 representing him professionally in 2016-2017, when the Federal
18 Trade Commission first opened up a civil investigation into
19 Mr. Zeitlin. I know him to be a man of integrity and
20 conscience.

21 The government's got serious allegations in that
22 indictment, and we intend to defend them. I believe that many
23 of the things that were said in the government's opposition are
24 not true. Some of them are demonstrably not true.

25 So turning back to the addendum to Pretrial Services,

N9e2ZeiC kjc

1 they recommend release. We urge release.

2 Mr. Zeitlin is a seven-year parishioner at the
3 synagogue in Chabad of Summerlin. Rabbi Schanowitz has
4 testified to that with a penalty-of-perjury letter. This
5 occurred about seven years ago, and Mr. Zeitlin sought out
6 counsel there and has been a faithful member since.

7 The other issue is that Mr. Zeitlin has been paying a
8 huge amount of back taxes, and this is reflected in Doc 16,
9 particularly Doc 16-1, Attorney Dan Treuden of my firm files a
10 declaration. Mr. Treuden does a lot of civil tax work for the
11 firm.

12 Mr. Zeitlin who was the victim -- and his wife, the
13 Zeitlins were victims of serious CPA accounting malpractice,
14 and when the accountants and the CPAs started to tear apart all
15 of the returns, there was rank malpractice, and the Zeitlins,
16 unbeknownst to them, ended up owing an additional 4 or \$5
17 million in tax, penalty, and interest.

18 As evidence of the really quite amazing nature of the
19 malpractice was that the insurance defense lawyers and CPA
20 Raben settled that suit for policy limits even before discovery
21 commenced. The trouble with that was the policy limits were
22 fairly low.

23 And the other issue is that, in spite of the
24 malpractice, the Zeitlins still owed the tax that they didn't
25 know that they owed. And so Mr. Treuden sets out a chart

N9e2ZeiC kjc

1 there. And so Mr. Zeitlin has paid between 6 and \$7 million
2 over the past two or three years to pay those back taxes. For
3 someone who intended to flee the jurisdiction, I respectfully
4 submit that they wouldn't go paying 6 or \$7 million in back
5 taxes to catch up. I have had conversations with Mr. Zeitlin.
6 It is incredibly important to him that he clear up these old
7 tax debts, and he's been taking great pains to do it. And
8 actions do speak louder than words. It's not the actions of a
9 man who is contemplating flight.

10 THE COURT: How old is he?

11 MR. BERNHOFT: 54, your Honor.

12 THE COURT: Five four?

13 MR. BERNHOFT: I'm sorry?

14 THE DEFENDANT: 52.

15 MR. BERNHOFT: 52. I apologize, your Honor.

16 THE COURT: Thank you.

17 MR. BERNHOFT: The other thing Mr. Zeitlin was a
18 victim of, he was a victim of embezzlement. His chief
19 financial officer -- I can give her name to the record if I
20 need to. She was ultimately terminated. Mr. Zeitlin had known
21 her for 15, 20 years and her family, and as a function of
22 CPA Raben's lack of oversight and professional discharge of
23 obligations as a CPA, there was no internal controls, and so
24 Mr. Zeitlin was embezzled from -- we don't know exactly how
25 much the embezzlement was because the books and records were

N9e2ZeiC kjc

1 deliberately kept in a manner that obscured the embezzlement
2 itself. So the forensic CPAs that tore that apart weren't
3 clear about that.

4 So I relate this to the Court in response to the
5 government's position that he should -- that he's got millions
6 of dollars of liquidity laying around. It's not the case.

7 The other thing is, I'm familiar with banking
8 procedures. In order to wire transfer or ACH the types of sums
9 that we are talking about, they require that signature, that
10 account holder, to do that in person.

11 Now, he has a colleague who has electronic access, and
12 so we were able to -- I have a \$250,000 cashier's check from my
13 trust account that we have been doing at 50,000 increments at a
14 time to get that, because we can't do the large transactions.

15 There is also another account with funds in it, and
16 the Nevada lawyers drafted a power of attorney, and he gave
17 durable power of attorney to this colleague, a trusted friend,
18 and Wells Fargo legal has been sitting on that for a couple of
19 weeks.

20 So I just -- it's very difficult to get that kind of
21 money in liquidity out and available when Mr. Zeitlin is in
22 detention.

23 So there isn't this -- there aren't millions of
24 dollars laying around that we can access. We do have cash and
25 funds, and we offered that in our motion for bail.

N9e2ZeiC kjc

1 Two issues, and these issues came up in Nevada, and
2 because of the out-of-district arrest, we were not expecting
3 that. We were not prepared for that. We did not have Nevada
4 counsel pre-engaged. It happened in the early morning hours of
5 Thursday, August 17. But we immediately set to work. We
6 engaged attorneys, and they went out there to counsel with
7 Mr. Zeitlin.

8 And the two issues that appeared to cause the
9 government the most concern are this jet plane and these
10 renunciation e-mails. Now, I received the renunciation e-mails
11 from the government by e-mail I think about an hour or two
12 before the first hearing on Thursday, August 17, and I also
13 received a picture of the jet. So the issue of the private
14 plane and these renunciation e-mails, the government knew that
15 and I knew that and Mr. Kiebler, AUSA Kiebler, Nevada AUSA,
16 presented to the Court, Magistrate Judge Ferenbach, that there
17 was an agreement in terms of release.

18 The government has pointed out that our proposed
19 release conditions aren't as severe as those we agreed to in
20 Nevada, and that is absolutely correct. I was very concerned.
21 I have done out-of-district arrests and detention hearings, and
22 the concern is—and it's understandable—the magistrate judges
23 will many times over-condition or even sometimes detain,
24 because it's not their indictment, and they are justifiably
25 concerned about making a mistake in an indictment that is not

N9e2ZeiC kjc

1 issued from their jurisdiction, and many times they will let
2 the indictment-issuing jurisdiction sort that out, and I
3 believe that's what occurred here. And I'm not here to attack
4 the magistrate judge's order. It was short notice for
5 everybody. Some of the things the mag judge said in the
6 transcript that I just reviewed are at odds with the order
7 itself. But, you know, Mr. Zeitlin is employed. He has
8 substantial ties to Wisconsin and Nevada. None of that was
9 reflected in the order.

10 I would like to directly address the --

11 THE COURT: I understand he has two adult children
12 living in Wisconsin.

13 MR. BERNHOFT: Yes, Judge.

14 THE COURT: But what other ties does he have to
15 Wisconsin?

16 MR. BERNHOFT: Oh, his former wife lives there, and he
17 has friends and family there, and he visits Wisconsin often.
18 His principal ties in Nevada, and that is where his wife and he
19 live on La Madre Way, and that is where he's lived for 30
20 years.

21 THE COURT: He and the wife are allegedly divorcing.

22 MR. BERNHOFT: They are divorcing. That is correct,
23 your Honor.

24 THE COURT: What other ties does he have to Nevada?

25 MR. BERNHOFT: Well, his whole life is in Nevada.

N9e2ZeiC kjc

1 He's built his companies there. He's built his personal life
2 there, his social circle. Everything revolves around Nevada.

3 Many years ago, Liliana Zeitlin, the currently
4 divorcing spouse, she was born in Mexico, so they vacation in
5 Mexico, and she suggested, and he agreed, and they started
6 purchasing some properties there. And there is a filing in the
7 Clark County Court where, pursuant to the divorce, all of those
8 properties now will be liquidated and the sums will be split
9 50/50 into the divorcing spouses' respective counsel's trust
10 accounts. And so, if anything, that severs any ties he has to
11 Mexico. He is divorcing his Mexican-born wife and liquidating
12 those properties. And that was on the advice of divorce
13 counsel with the agreement of divorcing spouse's attorney.

14 The La Madre Way house is encumbered by IRS tax liens.
15 I spoke to Attorney Jimmerson, who is Mr. Zeitlin's divorce
16 attorney. He had run a title search preparing the house for
17 sale and the IRS tax lien showed up to the tune of about 3 1/2,
18 \$4 million, and that's the residuum of the taxes that they
19 still owe as a result the CPA malpractice.

20 I felt I put a lot of context on these renunciation
21 e-mails, and the fact of the matter is that Mr. Zeitlin has
22 been a law-abiding, tax-paying citizen his entire life. These
23 are serious charges. All federal charges are serious. There
24 is an obstruction count that we believe is predicated solely on
25 the testimony of one former employee, and we think we have a

N9e2ZeiC kjc

1 factual dispute on that charge. The fraud charges regarding
2 false statements and telemarketing scripts --

3 THE COURT: How much do you say are IRS tax liens on
4 the house in Nevada?

5 MR. BERNHOFT: Attorney Jimmerson told me it's between
6 3.5 and \$4 million of tax liens remain. One of the things
7 about that is IRS is a little slow on the draw in reducing --
8 it doesn't change its tax liens because you have made payments.
9 It doesn't work like that. So it is likely that the
10 outstanding tax liabilities are less than those liens, and
11 there is more equity in the house than would be facially
12 observed. But the tax liens speak for themselves at
13 approximately 3.5 to \$4 million.

14 THE COURT: How is it the liabilities on the residence
15 that are in the Pretrial Service report prepared in Nevada say
16 2 million?

17 MR. BERNHOFT: It says -- I'm sorry, Judge?

18 THE COURT: Liabilities on the residence are listed at
19 2 million in the Nevada Pretrial Service --

20 MR. BERNHOFT: I believe that is the mortgage balance.
21 So, there is a mortgage on the home.

22 THE COURT: Okay. So if there is a mortgage on the
23 home of 2 million and there are tax liens of 3.5 million, there
24 is essentially no equity in the residence.

25 MR. BERNHOFT: That is correct, your Honor.

N9e2ZeiC kjc

1 THE COURT: That's quite a tie to Nevada.

2 MR. BERNHOFT: Well, I understand your point, your
3 Honor. It's well taken. But Mr. Zeitlin is not going
4 anywhere. He has nowhere to go. This is his home.

5 THE COURT: How about Israel?

6 MR. BERNHOFT: I'm sorry?

7 THE COURT: How about Israel?

8 MR. BERNHOFT: I thought Rabbi Schanowitz's letter
9 addressed that fully. I spoke to Rabbi at length on a number
10 of occasions about that. He states in his letter that he
11 believes that that right of return program was an outgrowth of
12 Mr. Zeitlin's increasing faith. It was important to him. Rick
13 has related to me that he visited Israel and he was impressed
14 that an entire country -- I'm not Jewish --

15 THE COURT: He is an Israeli citizen.

16 MR. BERNHOFT: Yes. He did apply to the right of
17 return program. He's been provisionally accepted. My
18 understanding is that he has to go and live there for a very
19 significant period of time prior to being able to claim
20 citizenship and a passport. So if he travels to Israel even
21 if --

22 THE COURT: Two different items—citizenship and
23 passport.

24 MR. BERNHOFT: Yes. Well, the flight risk concern was
25 about the passport, so --

N9e2ZeiC kjc

1 THE COURT: And why is that?

2 MR. BERNHOFT: Well, because the government seemed
3 concerned that he was a citizen, he could scoop up an Israeli
4 passport and travel that way.

5 THE COURT: And isn't it a fact that, with a document
6 obtainable from any Israeli diplomatic mission in the world, I
7 believe, but certainly in the U.S. or London, it is possible
8 for an Israeli citizen to obtain a piece of paper called a
9 *laissez-passer* with an Israeli visa and enter Israel without a
10 passport, isn't that true?

11 MR. BERNHOFT: It very well could be, your Honor. I
12 can't speak to that. I'm sorry, sir.

13 THE COURT: Okay.

14 MR. BERNHOFT: Yeah.

15 We don't view Mr. Zeitlin -- and Mr. Zeitlin started
16 pursuing the right of return program and Israeli citizenship
17 years ago, prior to the advent of the SDNY grand jury.

18 THE COURT: When did he get the citizenship or
19 conditional citizenship?

20 MR. BERNHOFT: Within the last month or two, and
21 Rabbi Schanowitz's support letter certifying his heritage,
22 etc., I believe that was November 2021, and that letter is
23 attached to one of the declarations that is filed. So he
24 commenced that process well before we even knew there was
25 another grand jury investigating, the SDNY one, that yielded

N9e2ZeiC kjc

1 this indictment. That didn't happen until June of 2022.

2 And at that point Mr. Zeitlin and I and my legal team
3 felt that once the Florida grand jury terminated, we never got
4 any clear indication, but after two or three years of no
5 activity, it was clear that the Florida grand jury that
6 commenced in 2018 was shut down. We understand it was through
7 lack of evidence. Mr. Zeitlin was not indicted, and
8 Mr. Zeitlin justifiably believed that those travails were over.
9 And it was at that point when he was pursuing his Israeli
10 citizenship, without any connection to the current indictment
11 or any intention to flee. And I think the facts reflect that
12 as supported by Rabbi Schanowitz's letter and my experience and
13 understanding of Mr. Zeitlin's history over the past number of
14 years.

15 The renunciation e-mails, we have addressed that
16 squarely. We attach them to our bail motion. I'm not sure how
17 I would have -- if I was in Mr. Zeitlin's position, how I might
18 have reacted. I have, I suppose, over the past 30 or 40 years,
19 particularly when I was younger, perhaps sent an e-mail
20 communication that I regretted. I try to avoid that at all
21 costs, petulant communications, things we don't really mean.
22 But as we put context on it in the motion, Mr. Zeitlin has been
23 hounded for years—FTC investigations, attorneys general
24 investigations. All of them are terminated in his favor.

25 He's committed to compliance, and his business spends

N9e2ZeiC kjc

1 an enormous amount of money on legal compliance, has attorneys
2 that advise on political action committee scripts, what can be
3 said, what can't be said. I want to be clear, this is not some
4 sort of an allegation of some sort of boiler room operation
5 that generated hundreds of millions of dollars with money for
6 charities and PACs for decades and somehow it's like a boiler
7 room. This is not the case. This is a highly sophisticated,
8 professional operation that he has built over many decades.

9 The renunciation e-mails, I have talked to Mr. Zeitlin
10 about it. We explained it in the paper. He is prepared to
11 make a statement to the Court today about it. He never took
12 action on it. And he felt that his own government had turned
13 its investigative forces and powers on him unjustifiably and
14 then, particularly after the 2022 grand jury reopened in
15 Southern District of Florida, it just never ended. And he
16 regrets the e-mails. He never took any action on them.

17 As we point out in the paper, your Honor, renouncing
18 his citizenship would have been detrimental to any intent to
19 flee, and Mr. Zeitlin is not an irrational man. He is an
20 intelligent man. That would have put a target on his back.
21 Notification goes to State Department and consular offices, and
22 many times people that renounce their citizenship are
23 investigated collaterally because it could be, you know, could
24 be a terrorism issue or some such thing. So --

25 THE COURT: Do you think we have a lot of terrorists

N9e2ZeiC kjc

1 who do that?

2 MR. BERNHOFT: Some of the home grown ones I heard do,
3 but domestic, U.S.-born ones will renounce their citizenship
4 and attempt to go to Syria. I've read these articles. I don't
5 have personal experience with it and I'm not in federal law
6 enforcement. Special Agent Balog could probably speak to that
7 more directly than I could.

8 THE COURT: Okay. Anything else?

9 MR. BERNHOFT: We proposed conditions of release that
10 we believe are reasonable, will reasonably assure Mr. Zeitlin's
11 appearance. This is going to be a complex case to prepare, a
12 complex case to try. It's very important I have constant
13 access to Mr. Zeitlin --

14 THE MARSHAL: Sit down.

15 MR. BERNHOFT: Excuse me. Could I confer with my
16 client, Judge?

17 (Defense counsel and defendant confer)

18 MR. BERNHOFT: Mr. Zeitlin reminded me on the
19 renunciation e-mails that the Florence, Italy, consular office
20 invited Mr. Zeitlin to come and make an appointment. Of course
21 he never did that. So I wanted to make that point clear.

22 We believe the conditions we proposed, again, are
23 reasonable, will reasonably assure his appearance. He is
24 committed to fight these charges against him and vindicate his
25 reputation. He has nowhere to go, your Honor.

N9e2ZeiC kjc

1 We respectfully urge that the Court would grant the
2 proposed order that we submitted in our main bail motion.

3 THE COURT: Thank you.

4 MR. BERNHOFT: Thank you, Judge.

5 THE COURT: Ms. Kim.

6 MS. KIM: Yes, your Honor. May I use the lectern?

7 THE COURT: Yes. I would appreciate it if you would.

8 MS. KIM: Your Honor, beginning with risk of flight,
9 there are essentially four reasons why the government submits
10 that there are no conditions that will reasonably assure the
11 defendant's appearance in court. Those are his limited ties to
12 the community; his wealth and access to resources to flee; his
13 history, which has established that he is an experienced and
14 sophisticated individual who repeatedly deceives others,
15 including courts; and, finally, his disregard for the law.

16 Starting with his limited ties, as the Court stated,
17 the defendant has essentially no equity in his Las Vegas home,
18 and that is his principal home in the United States. We are
19 not aware of any other homes.

20 The defendant is in the process of getting divorced.

21 He has attempted multiple times to renounce his U.S.
22 citizenship. He has Israeli citizenship and would be able to
23 travel there based on that.

24 He has significant foreign travel, and he owns
25 approximately ten properties in Tulum, including two restaurant

N9e2ZeiC kjc

1 businesses and various shops.

2 The government also notes that his call center
3 business operates --

4 THE COURT: What's your answer to counsel's argument
5 relating to the liquidation of those properties as part of the
6 divorce?

7 MS. KIM: Your Honor, in terms of liquidation, my
8 understanding, based on what defense counsel has submitted, is
9 that the money would then go into a trust based on the order.
10 The government would not have immediate visibility into when
11 that money would then be available to Mr. Zeitlin. We also
12 don't know if there are certain circumstances under which he
13 would be able to access that money. But in addition to that,
14 your Honor --

15 THE COURT: Presumably he could do whatever he wanted
16 with it to the extent the divorced spouse went along with it.

17 MS. KIM: Yes, your Honor, presumably.

18 In addition to that, your Honor, the defendant has
19 immense resources, and this is in part because he was the owner
20 and operator of the call center business for at least 29 years.
21 The business raised hundreds of millions of dollars for various
22 charities and PACs, and the business typically was paid
23 approximately 90 percent of that money. The defendant has
24 reported to Pretrial Services in New York that his income has
25 been at least approximately \$600,000 per year. His business

N9e2ZeiC kjc

1 continues to operate and he continues to have access to the
2 business's funds.

3 THE COURT: Is he the sole owner of the business?
4 What's the ownership structure?

5 MS. KIM: Your Honor, as of now -- so the business has
6 changed in terms of organization over the years. At one point,
7 prior to approximately 2016, the call center business went by
8 the name of Courtesy Call.

9 In or about 2016, the defendant changed the name of
10 the call center business to Donor Relations, although the basic
11 functioning of the business remained the same.

12 In or about 2018, the defendant replaced the Donor
13 Relations entity and created additional entities to take its
14 place. Those were Unified Data, Compliance Consultants,
15 American Tech, TPFE, and ATC.

16 And then in about 2020 forward, the defendant used
17 various d/b/as, for example, Cloud Data for Unified Data,
18 American PCI for Compliance Consultants, and Unlimited Tech
19 Support for American Tech.

20 These are all ways in which the defendant created
21 various layers to conceal, and continue to conceal, his fraud
22 from the public and from the FEC.

23 In 2021 to present, the defendant selected certain
24 employees of the call center business, and he made them nominal
25 owners of certain entities, and so right now the call center

N9e2ZeiC kjc

1 business, as we understand it, consists of LAV Services, EYP
2 Consultants, Wired for Data, and Standard Data Services. And
3 the defendant also has a bank account that has continued for
4 Unified Data.

5 These entities, your Honor, the defendant continues to
6 have control over. The employees who are running these
7 entities by name continue to report to and speak with the
8 defendant.

9 Turning back to the defendant's wealth and his access
10 to resources to flee, we note that the defendant was able to
11 secure \$250,000 in cash in less than 24 hours after his arrest,
12 and our understanding was that defense counsel anticipated
13 securing an additional \$250,000 in cash shortly thereafter. In
14 the past three years and three months, he has paid, based on
15 defense counsel's submissions, over \$6.8 million in taxes.
16 Just in the last year, he's paid --

17 THE COURT: I'm sorry. The time period you just
18 stated?

19 MS. KIM: That is in the last three years and three
20 months, he paid over 6.8 million in -- and I said taxes. I
21 think these are back taxes, your Honor.

22 In the last year, he's paid over 1.3 million in back
23 taxes owed.

24 The fact that he has been able to make these
25 substantial payments and the fact that he has been able to

N9e2ZeiC kjc

1 access upwards of \$500,000 in cash so quickly shows that the
2 defendant has access to resources that the Court has not been
3 made aware of and that that access would allow him to flee.

4 You know, the plane is something that has come up in
5 this proceeding and in the prior proceeding. It is unclear to
6 the government whether or not the plane is operable. Based on
7 what the government has seen from online postings from March of
8 this year, it appears the defendant at least represented that
9 the plane was operable and that his ownership interest in the
10 plane amounted to approximately \$600,000. Regardless, that
11 plane is another example of an asset, and the defendant's
12 access to resources to flee and also his familiarity with
13 flying privately, your Honor.

14 One thing the government would also note about the
15 defendant's back taxes --

16 THE COURT: Does the government know where the other
17 50 percent ownership interest is and what the relationship
18 between the owners is?

19 MS. KIM: Your Honor, based on defense counsel's
20 representations, we understand that there may be one or two
21 additional owners, and our understanding is that those one or
22 two owners own 50 percent. We don't know what the relationship
23 is between the defendant.

24 THE COURT: Do you know who they are?

25 MS. KIM: Yes. That's based, again, on defense

N9e2ZeiC kjc

1 counsel's representations.

2 THE COURT: Well, based on their representation, who
3 do they say they are?

4 MS. KIM: Yes, your Honor. If I could have one
5 minute.

6 (Government counsel confer)

7 MS. KIM: Your Honor, the other owner is Joseph
8 Mirakhor.

9 THE COURT: Mirakhor?

10 MS. KIM: Mirakhor.

11 THE COURT: Mirakhor.

12 And what's his connection to the defendant, if you
13 know?

14 MS. KIM: I do not know.

15 THE COURT: Does he work for any of these entities?

16 MS. KIM: We do not believe at this time that he works
17 for any of these entities.

18 THE COURT: Do you believe at this time that he used
19 to work for --

20 MS. KIM: No, your Honor.

21 THE COURT: Okay. Go ahead, please.

22 MS. KIM: We would also point out, in terms of the
23 back taxes, that even just based on defense counsel's
24 submission, it appears that the defendant learned about the
25 back taxes and the issues with his records in or about

N9e2ZeiC kjc

1 September 2018, and he then sought out defense counsel's
2 assistance. But also based on the defendant's submission, it
3 appears that the defendant continued to fail to pay taxes after
4 September 2018, when he was on notice about these issues. And
5 for tax years 2020, 2021, and 2022, he continues to owe back
6 taxes.

7 Based on all of this information, the government
8 submits that the defendant both has access to resources and
9 additional wealth that would enable him to flee the
10 jurisdiction. And based on his limited ties to the community
11 and his significant foreign ties and foreign travel, the
12 defendant is a risk of flight.

13 In addition, the defendant's history and
14 characteristics show that he is experienced and sophisticated
15 at deception and that the Court cannot rely on his word. He is
16 charged with fraud offenses relating to misrepresentations and
17 false statements made to donors through fundraising calls.
18 Through those fundraising calls, the defendant made a variety
19 of different types of misrepresentations. Some of those were
20 about the nature of the organization that was doing the
21 fundraising. Some of them were about how the money would be
22 spent. And also some of them relate to an agreement that the
23 defendant had with certain PAC owners that, during certain time
24 periods, all of the money that was raised would go to the
25 defendant's telemarketing company. And despite that agreement,

N9e2ZeiC kjc

1 he was still soliciting funds and representing to potential
2 donors that those funds would then go to the organization that
3 was making the call.

4 The defendant's scheme was sophisticated and
5 complicated, and he used various tactics to conceal the fraud.
6 As I mentioned earlier, he changed the name of his businesses
7 numerous times. His mode of communication with his employees
8 including about the fraud were very particular. He at a
9 certain point decided to limit his e-mail communications with
10 his employees. He used encrypted applications like Signal that
11 delete messages and data. He principally communicated with
12 employees through phone calls. And he also appears to have
13 used various phones, some of which were seized, and that also
14 includes encrypted phones.

15 THE COURT: Is there any reason to think that this
16 business couldn't be operated from abroad with essentially the
17 same facility as it is operated from the U.S.?

18 MS. KIM: Your Honor, there is no reason to think that
19 he could not operate the business from abroad. In fact, as I
20 mentioned earlier, there are call center locations overseas,
21 and the majority of the employees, as we understand it, work
22 remotely.

23 THE COURT: Thank you.

24 MS. KIM: The last point, your Honor, is that the
25 defendant has established that he has a complete disregard for

N9e2ZeiC kjc

1 the law, and this is highlighted by the fact that he made false
2 or misleading statements in connection with three different
3 federal proceedings.

4 The first was a civil deposition on or about December
5 8, 2020. That's in the case *Zeitlin v. Bank of America*,
6 18 Civ. 1919. That is in the District of Nevada. During that
7 civil deposition, among other false statements, the defendant
8 stated that he and his call centers did not have any input
9 into call scripts to determine what was said to potential
10 donors. That is false. E-mails and other evidence show that
11 the defendant and his employees did in fact edit call scripts.

12 Another example of a misrepresentation is a
13 declaration that the defendant filed in federal court to Judge
14 Christopher Conner. This is in the Middle District of
15 Pennsylvania. The case is *Shoemaker v. Zeitlin*, 21 Civ. 1669.
16 The declaration is Docket 40. It is dated on or about March 1,
17 2020.

18 Some of the misrepresentations are as follows:

19 In paragraph 10, the defendant stated "Wired for Data,
20 LLC, is not associated with, operated by, or controlled by me."
21 And he goes on to say, "and I do not direct, supervise, or
22 control this entity."

23 He makes essentially similar statements in paragraphs
24 11 and 12 about the entities LAV Services and Standard Data
25 Services.

N9e2ZeiC kjc

1 As I mentioned earlier, these are three entities for
2 which the defendant selected an employee to be the nominal head
3 of the entities and he continues to operate them.

4 THE COURT: What's the evidence to support that last
5 statement?

6 MS. KIM: The fact that he continues to operate these
7 entity, your Honor?

8 THE COURT: Yes, and that he selected these straw
9 owners.

10 MS. KIM: Yes, the evidence there consists of things
11 such as witness statements, and so we are -- our understanding
12 is that despite the fact that these entities were created with
13 these nominal owners (a) the call center business has
14 continued; you know, no substantial differences have been made;
15 the defendant continues to be the boss of the call centers; he
16 continues to oversee the call centers; and he also continues to
17 have ultimate control over, for example, the salaries of the
18 individuals who nominally own these entities.

19 THE COURT: And so you are telling me that you have
20 live witnesses who substantiate this?

21 MS. KIM: Yes, your Honor. We also have documents
22 that show that the defendant is involved in the day-to-day
23 activities of the call center, even up to the present time.

24 THE COURT: Okay. Thank you.

25 MS. KIM: The last point, your Honor, which I won't

N9e2ZeiC kjc

1 belabor, is most recently, after the defendant's arrest, that
2 the defendant did not include the fact that he had partial
3 ownership in a private plane in his interview with Pretrial
4 Services. Of course the defendant does not have to answer
5 questions in the Pretrial Services interview, but the
6 government submits that providing incomplete information or not
7 describing all of his assets presents a misleading
8 representation of his resources.

9 And so for all of those reasons, the government
10 submits that he poses a risk of flight.

11 Very quickly, in terms of danger to the community, the
12 defendant is charged with obstructing justice by instructing
13 employees to delete evidence of his fraud. The defendant used,
14 as I mentioned earlier encrypted and other means to communicate
15 with others, and there is a serious risk that the defendant
16 will obstruct justice, particularly in part because of his
17 ongoing disregard for the law. And based on Second Circuit law
18 and also *Stein*, which is a case before your Honor, obstructing
19 justice does constitute a basis for remand.

20 So for all of those reasons, your Honor, the
21 government submits that the defendant should be remanded.

22 THE COURT: Thank you.

23 Relatively briefly, Mr. Bernhoft.

24 MR. BERNHOFT: Yes. I appreciate the opportunity,
25 your Honor.

N9e2ZeiC kjc

1 We submit that it is categorically
2 false—categorically false—that Mr. Zeitlin has ever deceived
3 any federal, state court or other tribunal or has demonstrated
4 any disregard for the law.

5 The *Shoemaker* case, government counsel is
6 interpreting, applying a sham alter ego nominee theory to
7 testimony that Mr. Zeitlin -- again, and drawing the conclusion
8 that it is false. In fact, Mr. Zeitlin's statements in the
9 declaration in *Shoemaker* were true. He is not the owner of
10 Wired for Data. He is not the owner of LAD Services. And
11 there are witnesses who will testify that he doesn't own them
12 and doesn't control them. Those entities file tax returns
13 independent of anything Mr. Zeitlin owns.

14 And I resent the fact that the government comes in
15 here and says he is deceiving courts. He's been a law-abiding,
16 tax-paying American his entire life. We stand by that
17 declaration. I will defend that declaration.

18 The Bank of America case, I have been lead litigator
19 on that case for five or six years. They cherry-pick a couple
20 of statements along the same lines about control of entities
21 and editing scripts, and the government claims that Mr. Zeitlin
22 made false statements because the statements he makes
23 contradict core elements of their theory of criminality, and
24 that is not a basis for a reasonable person to conclude that he
25 deceives courts and disregards the law.

N9e2ZeiC kjc

1 THE COURT: Did he ever, even once, have any input
2 with respect to any script?

3 MR. BERNHOFT: Oh, sure, but -- yeah, I think that's
4 true. Mr. Zeitlin has been a telemarketer for 30, 35 years.
5 All of the entities that he works with as clients, he doesn't
6 know what they are doing in terms of their mission statements.
7 They have to approve the script, they have to sign approval,
8 and nothing goes live and no telemarketing occurs until the
9 organizations --

10 THE COURT: That isn't the point. Did he testify in
11 the deposition that he never had any input into any of the
12 scripts --

13 MR. BERNHOFT: No. He did not testify to that. This
14 is cherry-picked testimony from a seven-and-a-half-hour
15 deposition --

16 THE COURT: I'm not asking how long the deposition
17 was. I'm not asking whether it was cherrypicked. Of course it
18 was. That's what lawyers get paid to do, to focus on the
19 evidence that supports their case, not the other case.

20 MR. BERNHOFT: I understand that, your Honor.

21 THE COURT: Now can I see the deposition transcript,
22 please?

23 MS. KIM: Yes, your Honor.

24 THE COURT: Thank you.

25 MS. KIM: I would direct the Court's attention to page

N9e2ZeiC kjc

1 57.

2 THE COURT: From the deposition of the defendant on
3 December 8, 2020, page 57:

4 "Q Do they use a script? How do they know what to say?

5 "A Yes, they use a script.

6 "Q Okay. Who writes the script for them?

7 "A The organizations that we represent.

8 "Q Okay. They write the script. Do you have any input into
9 the script?

10 "A No."

11 MR. BERNHOFT: And I think that's a correct statement
12 in context, your Honor. And this is a complicated area and
13 complicated issue.

14 THE COURT: There is nothing complicated about it,
15 counsel. I just asked you whether he ever said -- excuse me,
16 whether he ever edited scripts, and you said yes.

17 MR. BERNHOFT: Whether he had input into scripts, some
18 people will come to him and say, "What do you think about
19 this?" He doesn't write the scripts. He doesn't edit them.
20 He doesn't approve them. It's not that straight forward, your
21 Honor.

22 THE COURT: Let's move on.

23 MR. BERNHOFT: I will address the issue of spinning
24 off companies, which is a very common business practice. The
25 Court will note, based on AUSA Kim's statements, that these

N9e2ZeiC kjc

1 entities that were spun off from the main Zeitlin
2 enterprise—data, compliance, IT. There are about four or five
3 critical aspects of any successful fundraising enterprise, and
4 the companies were designed -- he had people that were loyal,
5 that worked very hard, and they went out and formed their own
6 companies to handle various aspects while Mr. Zeitlin focuses
7 on data. These people know each other very well. They trust
8 each other. They have been in business together for a long
9 time. It does not mean that Mr. Zeitlin was trying to be
10 deceptive by spinning off those companies.

11 I mean, Steve Jobs and Jony Ive from Apple, that's
12 what they did. Some of the core people would develop certain
13 aspects, and Ive would go his own way.

14 Of course they talked. They did business. This is
15 ordinary business, your Honor. It is not a sign of deception.

16 It's never a bad thing to pay your taxes as far as I
17 can tell. And Mr. Zeitlin's been trying to catch up from the
18 CPA malpractice he was a victim of for many years and doing the
19 best that he can. The \$250,000 we actually did not obtain in
20 Nevada because the bank flagged the wire transfer to
21 Attorney Lance Maningo's trust account as a fraudulent
22 transaction. The whole thing blew up and the whole thing
23 failed. That's what happens with some of these large wires,
24 when the principal is not there in person to authorize the
25 wires.

N9e2ZeiC kjc

1 The relationship between Joseph Mirakhor, Bondio LLC,
2 and Mr. Zeitlin is at daggers drawn. It is controversial.
3 Mr. Zeitlin believes he was taken advantage of.

4 The timeline is clear, though, and Pilot Ross's
5 affidavit speaks to this. When Mr. Zeitlin put his share of
6 that plane up for sale -- and of course you can't buy a working
7 Gulfstream III jet, even circa 1980, you can't buy a jet for
8 \$1.3 million. So Mr. Zeitlin is selling his share for
9 \$650,000, knowing at the time that Gulfstream had to come in
10 and recertify the frame of that jet, and that was understood.
11 But he did not know that Mirakhor and other partners had
12 started to cannibalize that plane for their other jets. And
13 that's what Pilot Ross testifies to based on firsthand
14 knowledge.

15 The nominal ownership is a theory. I submit that
16 those witnesses will testify that they run those companies;
17 that they file tax returns on the income those companies
18 generate; that, yes, they continue to have conversations with
19 Mr. Zeitlin. Many of these entrepreneurs that develop a large
20 enterprise step back and spin off sub-aspects of their company
21 for others to handle. It's very common. It's not a sign of
22 deception.

23 I just -- on balance, Mr. Zeitlin has not been
24 deceptive. He has handled these investigations with dignity
25 and grace that started back in 2016-17. We cooperated with the

N9e2ZeiC kjc

1 FTC, produced documents to them. Then the Florida grand jury
2 popped up and Judge Navarro in Nevada stayed it, on her own
3 motion, because of the overlap in subject matter. We had know
4 control over that.

5 2018, cooperated regarding the subpoenas in that
6 matter. I have reviewed --

7 THE COURT: I think you are wandering a little.

8 MR. BERNHOFT: I have reviewed 4 or 500,000 pages of
9 e-mail communications from the Zeitlin companies, how they do
10 business. Everything is about compliance. I haven't seen one
11 inculpatory electronic communication that would suggest that
12 any of the participants were intentionally, knowledgeably
13 engaging in fraud.

14 I would respectfully urge the Court to impose
15 reasonable conditions of release so Mr. Zeitlin can prepare for
16 trial.

17 Thank you, Judge.

18 THE COURT: Okay. Thank you.

19 Decision is reserved.

20 Now, we have the issue of the *Curcio* and I'm already
21 late for another matter, so we are going to have to put that
22 over.

23 What would be convenient, bearing in mind I have a
24 trial starting October 3.

25 MS. KIM: Your Honor, the government is available.

N9e2ZeiC kjc

1 Any time, for example, next week would work.

2 MR. BERNHOFT: I will make myself available, your
3 Honor.

4 THE COURT: All right. I will let you know a date,
5 but it will be between now and October 3.

6 MR. BERNHOFT: Thank you.

7 MS. KIM: Thank you, your Honor.

8 MR. DRATEL: Your Honor?

9 THE COURT: Yes, Mr. Dratel.

10 MR. DRATEL: I have a Second Circuit brief due next
11 Friday, so the following week would probably be better.

12 THE COURT: It won't be next Friday, that I guarantee
13 you.

14 MR. DRATEL: No, I mean by next Friday, so I will
15 be --

16 THE COURT: Oh, by next Friday. So you are talking
17 about the week of what?

18 MR. DRATEL: The 25th, although Monday is Yom Kippur,
19 so --

20 THE COURT: I'm not going to do that day either, I
21 promise.

22 MR. DRATEL: Tuesday to Friday of that week.

23 THE COURT: We will fit it in somehow.

24 MR. DRATEL: Thank you, your Honor.

25 MR. BERNHOFT: Your Honor, may I?

N9e2ZeiC kjc

1 THE COURT: Yes.

2 MR. BERNHOFT: I did want to point out to the Court,
3 and I apologize, I was focused on all of this mass material. I
4 do want to point out that Mr. Zeitlin's mother is here from
5 Wisconsin in support of his release, as is one of his children,
6 daughter Sarah, and also a close friend from a long time from
7 Nevada, Nick Marlow is here to support Mr. Zeitlin. And
8 particularly Mrs. Zeitlin and daughter Sarah were hoping that
9 they might be able to visit briefly, subject to the USMS
10 discretion, with Mr. Zeitlin after the hearing. Is that
11 possible, Judge?

12 THE COURT: Whatever the marshals feel is appropriate
13 they can do.

14 MR. BERNHOFT: All right. Thank you. I appreciate
15 it, Judge.

16 MS. KIM: Your Honor, very quickly, the government
17 asks the Court to exclude time between now and October 3. We
18 understand that the Court may set another conference schedule
19 by October 3.

20 The exclusion of time would allow the Court to
21 consider all of the arguments made, it would allow the
22 government to produce discovery, and for the defendants to --

23 THE COURT: I would have anticipated you would be
24 asking for --

25 MS. KIM: Oh, yes, your Honor.

N9e2ZeiC kjc

1 THE COURT: -- a very different date.

2 MS. KIM: That is very true.

3 We would ask that time be excluded between now and
4 April 2, 2024.

5 THE COURT: Is there any objection to that?

6 MR. BERNHOFT: None.

7 THE COURT: Granted for the reasons articulated.

8 MS. KIM: Thank you, your Honor.

9 THE COURT: Ms. Kim.

10 Okay. Thank you very much.

11 MR. BERNHOFT: Thank you, your Honor.

12 oOo

13

14

15

16

17

18

19

20

21

22

23

24

25